GEOGRAPHIC DISADVANTAGE AS A BASIS FOR MARINE RESOURCE SHARING BETWEEN STATES

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INTRODUCTION

"Geographic Disadvantage" is perhaps one of the most frustratingly ambigious terms to emerge from the Third Law of the Sea Conference negotiations. It is used as the basis for granting certain concessions to States which are "geographically disadvantaged". No comprehensive definition which can be applied in all circumstances is attempted in the text of the Third U.N. Convention on the Law of the Sea (UNCLOS III).[1]

Apart from definitional problems, there are conflicting arguments regarding the policy basis for such States to receive concessions. Is this category to be placed on an independent footing separate from developing nations? And even if there is justification for such States being granted concessions, what form should such concessions take? Should it be purely monetary grants, favourable fishing rights, favourable mining rights, rights to receive transfers of technology for marine mining, or a combination? These are the live issues.

This paper will not touch on other connected issues such as landlocked States' rights to freedom of transit to and from the sea,[2] or the right of geographically disadvantaged States to participate at least on an equal footing with other States in the bounty of the Area of the deep sea bed beyond national jurisdiction. This is assumed to be self-evident. The aim is not to cover the subject comprehensively. This would be impossible. Rather, it is to explore some problems in the arguments and issues and see whether they can be put more clearly or rationally, or if not, should be abandoned. A proposed working definition of the term is suggested.[3] It is the thesis of this paper that the concept of geographic disadvantage is one which cannot be lightly bandied about as an alternative or second-string to the north-south dialogue.

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[1] The Art. 70.2 definition is confined to operation within Part V (Exclusive Economic Zone provisions). See glossary of terms and abbreviations below.

[2] This right has been recognised in one form or another for some time e.g. multilateral agreements as early as the *Barcelona Convention and Statute on Freedom of Transit* (20/4/1921) and *Convention on Transit Trade of Landlocked States* (New York, 8/7/1965).

[3] See below, pp. 000.

"To increasingly 'politicize' the geographically disadvantaged concept could mean that its viability with respect to the more 'legitimate' claimants may be undermined."[4]

The only fear is that this has already happened or if not has at least begun to happen.

APPROACHES TO DEFINITIONAL PROBLEMS

Some may think that resistance to ambiguous or unduly wide definitions in this area is necessarily an anti-Third World attitude. It is not. William Burke brought this point home quite effectively by publishing a creative piece of writing presumably submitted, with appropriate tongue-in-cheek, by Professor E. H. Rhindquist.[5] That article purported to be the "Report of the United Nations Special Committee on Geographical Disadvantage – Comprehensive Proposal for Accommodation of Geographically Disadvantaged Countries". It goes on to list equatorial advantage (cooler climates produce more aggressive people), inverse population factor (large population is an economic asset) and nomenclatural disadvantage (names carry connotations of wealth and power and create feelings of inferiority, and recently independent nations find all the best names already taken). To solve this, proposals are made for the equal sharing of land and sea area by re-drawing all international boundaries. There were ideas that there would also have to be equal sharing of natural features (mountains, rivers, lakes, deserts and so on), resources (living, non-living, and even archaeological), and climatic conditions (snow, monsoons, fog, tropical sunsets and so on) but these were rejected!

While this is clearly Noddy-land stuff,[6] the point is well made that "disadvantage" is more a relative than an absolute concept,[7] and that there must be some limits as to which features of geography can be employed to justify the description "geographic disadvantage". It has been said that there are five possible elements in the definition of the term "geographically disadvantaged":

(a) Level of a State's economic development (because geographic problems would have unequal effect as between industrial and developing States. This assertion unfortunately is not explained).
(b) Physical characteristics of a coast (if any) and its adjacent waters and the ability of the State to utilise the resources of those waters.
(c) The breadth (and size?) of the Continental Shelf and the benefit which can be derived therefrom.

[4] Alexander, L.M. and Hodgson, R.D., "The Role of the Geographically Disadvantaged States in the Law of the Sea" (1976) 13 *San Diego Law Review* 558, 560.
[5] (1975) 3(2), *Ocean Development & International Law Journal* 181–186.
[6] Although there is something which approaches this farcical level of proposal. See proposal by the Netherlands in G.A.O.R., 28th Session, Supp. No. 21 (A/9021) Vol. V, title No. 67 and further detail reproduced in Extavour, W.C., *The Exclusive Economic Zone: A Study of The Evolution and Progressive Development of the International Law of the Sea*. Geneva, Institut Universitaire de hautes études internationales, 1979) p. 258.
[7] Alexander and Hodgson, 559.

(d) The type of sea and ease of access to it.
(e) Effect (adverse or otherwise) of the establishment of neighbouring territorial seas and exclusive economic zones (EEZ) of a State which does not have such large zones.[8]

The normal English meaning of the phrase "geographically disadvantaged" suggests a casual link between the geographic feature and the disadvantage suffered. If this is right, to what extent does the geography need to be the cause before they qualify? Should they have to demonstrate the casual link clearly before being entitled to geographic disadvantage status?

Where do landlocked States fit into this? It is submitted that the circumstances of being landlocked is subsumed under the general description of geographic disadvantage. That is, the condition of being landlocked is but one example of how geography can disadvantage a State.[9] If it be argued that this is not the case because there are some wealthy landlocked States, it is submitted that this further evidence that geography may not always cause disadvantage. Therefore the geographical feature(s) need to be linked to the disadvantage. Clearly this demonstrates the need to match the form of compensation with the type of disadvantage suffered. In the case of landlocked States unrestricted access to and from the sea is at least one form of appropriate compensation.

Throughout the Law of the Sea negotiations during the 1970s the official drafts on this subject clung to only two features which formed alternative definitions. The first was States whose geography made them dependent on neighbours' fish to feed their population. The second was States which could not claim their own EEZ. The 1974 draft[10] significantly confined its definition (both arms) to developing States. This qualification had been dropped by the time the 1979 draft[11] was circulated. This draft was identical to that proposed by Ambassador Nandan (Fiji) on the 19th May 1978 as Chairman of Negotiation Group 4.[12] Yet surprisingly, by some deft diplomacy the provision was described as an accommodation to the developing landlocked and geographically disadvantaged States and claimed the distinction between developed and developing landlocked and geographically disadvantaged States (LL & GDS) had been made even clearer.

[8] Mr Valencia Rodriguez (Ecuador), speech at the Third Law of the Sea Conference Debates, 2 UNCLOS III, Official Records of Proceedings, Second Session, Second Committee 8–9th August, 1974 32nd–35th Meetings (hereinafter the "Debates") 9/8/74 p. 257 para. 65.

[9] The general negotiating history of the Conference suggests this also. The phrase "landlocked and *other* geographically disadvantaged States" used in such drafts as the 22-power draft (Doc. A/CONF. 62/C. 2/I.39, 5/8/74) obviously connotes this meaning. See also Doc A/CONF. 62/C. 2/L.35 Art. 5 in text accompanying note 14 below. This also seems to have been the view of Mr Jagota (India) "The condition of being landlocked was a basic geographical disability" Debates p. 247 para. 22 and was implied by Mr Turmen (Turkey) in referring to the group of landlocked and other geographically disadvantaged States as "geographically disadvantaged States including the landlocked States . . ." Debates p. 251 para. 74, and also by Mr Valencia Rodriguez above note 8.

[10] Art. 59.1 Doc A/CONF. 62/WP. 8/Rev. 1/Part II (27/6/74).

[11] Art. 70.2 ICNT Revision 1, 28/4/79. UN Doc. A/CONF. 62/WP. 10/Rev. 1.

[12] Annex A to A/CONF. 62/RCNG/1, Annex NG 4/10.

Available to the Second Committee during its Second Session[13] was the Haiti-Jamaica draft which included a definition attracting a fair degree of comment. The definition read as follows:

> "Article 5
> For the purposes of these articles:
> 1. 'Geographically disadvantaged States' means developing States which
> (a) Are landlocked; or
> (b) For geographical, biological or ecological reasons:
> (i) Derive no substantial economic advantage from establishing an economic zone or patrimonial sea; or
> (ii) Are adversely affected in their economies by the establishment of economic zones or patrimonial seas by other States; or
> (iii) Have short coastlines and cannot extend uniformly their national jurisdiction."[14]

This draft left no doubt about the priorities in the mind of Third World countries. It clearly confines the category to developing nations and broadens the types of disadvantage sought to be compensated. Speeches in support of such an approach in the Second Committee's Second Session include those by delegates from Jamaica,[15] Ecuador,[16] Singapore,[17] Barbados[18] and Panama.[19]

But the 1974 drafts did not survive the debates in essential form. Clearly the omission of an overriding economic criterion[20] was deliberate and was a compromise essential to agreement. So why was the compromise necessary? At least one reason could be that the arguments in the speeches in favour of excluding economic development from consideration under the geographic umbrella were persuasive.[21] Such speeches included those by the delegates from Austria,[22] Switzerland,[23] Israel[24] and Sweden.[25] For example:

> "It now appear[s] that a majority of States ha[ve] accepted the view that there [will] be no differentiation between developing and developed countries with respect to the breadth of the economic zone. It would then logically follow that no distinction should be made between developing and developed States which were geographically disadvantaged.[26]
>
> There must be effective provision for a landlocked country or its enterprises to participate in the exploitation of the resources of the

[13] Meetings 32-35 8-9th August 1974.
[14] Document A/CONF. 62/C. 2/L. 35 (1/8/74).
[15] Debates p. 252 para. 1.
[16] Debates p. 257 para. 65.
[17] Debates p. 259 paras. 11 and 14.
[18] Debates p. 259 para. 5.
[19] Debates p. 247 para. 26. The delegate expressed the opinion that his reason was because it was too difficult to distinguish between advantaged and disadvantaged States purely on geographical situation alone.
[20] With the weak exceptions of Arts. 69.3,4 and 70.4,5 of UNCLOS III.
[21] See generally below in section 3.
[22] Debates p. 241 para. 28.
[23] Debates p. 243 para. 51.
[24] Debates p. 255 para. 38.
[25] Debates p. 240 para. 13.
[26] Debates p. 240 para. 13, Mr Myrsten (Sweden).

> international area; in considering competing proposals for such exploitation, the unfavourable geographical location and resulting distortion of the competitive position of the landlocked States would have to be taken into account... The transfer of technology [is] therefore of the utmost importance; in most cases that [is] a pre-requisite for a landlocked State to be able to participate actively in the exploitation of the international area. Even relatively highly industrialised States like [my] own lack sufficient marine science and technological know-how."[27]

It is also possible that Third World nations preferred some form of disadvantaged order to principled anarchy. (After all, they were still making significant gains.) For example, some of the speeches made at the time of voting on the Convention on 30 April, 1982, showed a substantial spirit of perhaps over-generous goodwill.

> "The Convention was meant to provide access to the resources of the sea for landlocked and geographically disadvantaged States . . . Despite its misgivings . . . Zambia has supported the Convention because of its positive elements and because the alternative might be lawlessness.[28]
> My delegation has serious reservations to some provisions of the Convention . . . Nevertheless, Sierra Leone has voted for the text in a spirit of compromise . . ."[29]

Perhaps it was hoped the term "disadvantaged" would speak for itself and serve as a substitute for "developing". But the term is broader than underdevelopment. There are two reasons why this is so. First, the Debates canvassed various terms meaning "developing State" but, as a result of compromise, did not employ them with respect to all disadvantaged States, only some.[30] Second, the dictionary meaning of "disadvantaged" is extremely wide:

> "Absence of advantage, an unfavourable condition or circumstance; detriment, loss, or injury to interest; prejudice to credit or reputation."[31]

Moving now to the term "geographically", the meaning of the word (or geography generally) is quite wide. The definition of it given by both the most respected dictionary in the world[32] and the most respected encyclopaedia in the world[33] make it clear the term encompasses not just physical characteristics of the land, surface, but also water and climatic, biotic, economic, social and political process.

> "Geography seeks to interpret the singificance of likenesses and differences among places in terms of causes and consequences . . . Unlike other fields, geography cannot be defined by its subject matter, for anything that is unevenly distributed over the surface of the earth can be examined profitably by geographical methods."[34]

[27] Debates p. 241, para. 28, Mr Tuerk (Austria).
[28] Marcus T. Mhlanga (Zambia) (June, 1982), *U.N. Monthly Chronicle* p. 21.
[29] Abdul G. Koroma (Sierra Leone) *U.N. Montly Chronicle* June, 1982, p. 20.
[30] That is, those mentioned in Arts. 69.3,4 and 70.4,5.
[31] *Shorter Oxford Dictionary* (Oxford, Oxford University Press, 1956 edn.).
[32] *Oxford English Dictionary*. (Oxford, Oxford University Press, 1933).
[33] *Encyclopaedia Britannica* (London, William Benton, 1970).
[34] *Encyclopaedia Britannica* op. cit. Vol. IX, p. 145.

Perhaps it is a brave man who disagrees with such formidable authority. However there are two reasons why such an incredibly wide meaning should not be ascribed for present purposes. *First*, nowhere during the debates and in the various drafts was the term used as widely as suggested by the references above. In other words whether rightly or wrongly, the delegates were contemplating a narrower meaning. This can be seen by looking at the drafting history where in earlier versions "developing" and similar terms were used to catch the spirit of what was meant. This was later dropped, presumably because it was considered inappropriate. The debates make it clear that geography was considered physical and therefore distinct from economic or political factors.[35]

Second, if the term is given the wide meaning offered above it would cease to function as an adjective qualifying or confining the term "disadvantaged" (or "State" or both). Clearly it is inserted for a purpose, and if geography encompasses every type of uneven distribution of anything, then it takes the phrase no further than if it were absent. This could not have been the intention, and it is apparent from the debates it was not.

The issue of whether developing States should be given concessions was always a separate issue from whether geographically disadvantaged States shoud also be entitled; of the issues were, separate in logic, not in time, because both were discussed together and of course it was often suggested they be placed together in the one requirement. Examples are Mr Myrsten (Sweden),[36] Mr Kazemi (Iran),[37] Mr Valencia Rodriguez (Ecuador),[38] Mr Robinson (Jamaica)[39] and Mr Chao (Singapore).[40] In commenting upon the Jamaica-Haiti definition in the 28th session[41] the Jamaican delegate explained it addressed itself to economic as well as geographical criteria, and therefore encompassed the essential features of a disadvantaged State.[42] The 14-power draft enumerates the types of States it seeks to favour without using the term "geographically disadvantaged" as "landlocked, near landlocked, shelf-locked States and States with narrow shelves."[43] One of Article 70's predecessors was Article 59 of the RSNT, which, during its revisions replaced the term "States with certain geographical peculiarities", with "States which manifest certain characteristics". At least one commentator has rightly recognised that this revision sought to satisfy the claims of some States that factors other than geographical location must be considered in determining the extent of the "geographical disadvantage".[44]

[35] See for example Debates p. 251 para. 71, Mr Turmen (Turkey).
[36] Debates p. 240 para. 13.
[37] Debates p. 244 para. 61.
[38] Debates p. 257 para. 65.
[39] Debates p. 252 para. 1.
[40] Debates p. 259 para. 14.
[41] Essentially identical in form to the 1974 definition, except it deleted reference to landlocked States, being dealt with by a separate article by that time. See text accompanying note 14 above.
[42] Doc. A/CONF. 62/C. 2/SR. 34 p. 252.
[43] Doc. A/AC. 138/SC. II/L. 40 "Draft articles on the exlusive economic zone".
[44] Extavour W.C., above note 6, p. 264.

It is submitted that because such phrases did not find their way into the final Convention, their omission was deliberate and therefore the meaning of the remaining words should be confined. The Third World delegates were obviously having problems getting such phrases past other States and their omission must be seen as a compromise abandoning the claim for rights on such bases. Therefore the UNCLOS III etymology of "geographically" disadvantaged States confines it to physical/topographical-type features.[45]

As a result, it is submitted that excluded from the concept are disadvantages caused by such things as geology, climate, demography, politics or underdevelopment itself. It is submitted the meaning of the phrase "geographically disadvantaged" can most usefully, consistently and defensibly be said to refer to: disadvantage of any sort (e.g. food supply or other economic, social or developmental problems) caused or significantly contributed to by reason of the geographic positioning of a State with relation to other States, seas or topographical features. The 22-power draft[46] did not even attempt a definition. Perhaps the task was too awesome.

If the meaning of the words suggested is most appropriate, the preoccupation of the Third World States with underdevelopment simpliciter as a basis for concessions is excluded. This is perhaps why Peru introduced the new word "geo-economically disadvantaged" State,[47] which seems better suited to their intentions, but did not gain favour.

Whatever the phrase used,if it clearly requires an underdeveloped qualifying hurdle rather than solely objective geographical criteria, one possible implication is that the right of participation in the compensation regime may cease to be operative when such States join the ranks of the developed countries.[48] This may be seen as sensible and desirable. It may even act as an incentive to developed nations to participate in the regime if they know the favours they grant would not necessarily be permanent and that, should fortunes reverse, there will be assistance for themselves.

As to the final version, being Article 70 UNCLOS III, the definition has two arms. On purely drafting principles, the first arm is probably quite acceptable in that it links geography to a particular disadvantage (inadequate fish supplies). It would therefore probably include (very largely) only developing States (for example, it would probably exclude Japan because geographic positioning does not cause its dependence on fish, so much as a combination of over-crowding on the islands and lack of other sources of protein. It would probably include Cameroon, Ghana, Ivory Coast and perhaps Thailand).

It is a small point, but the same need requirement which appears in Article 70 does not appear in Article 69 (landlocked States). That is, landlocked States not needing fish (in Article 70.2 sense) still have the same rights of participation as do geographically disadvantaged States. While it is true no applica-

[45] See Art. 148 UNCLOS III which refers to special needs of a geographically disadvantaged State as arising, inter alia, from their disadvantaged *location*.
[46] See note 9 above.
[47] In General Committee of Conferences 5/4/76.
[48] See Extavour W.C., above note 6 p. 260.

tion for participation would be made by a State unless it was in need, and it is also true all the "relevent economic and geographical circumstances" need to be taken into account (Article 69.1), it is still a drafting fault which could be abused.

The second arm of the Article 70 definition is quite different. Those States which cannot claim their own EEZ, may well include Singapore, Jordan, Iraq and Zaire which cannot be said to be of the same genre as those included within the first arm of the definition. That is, no element of dependence on sea resources is required for this alternative to be satisfied. However there is some doubt whether many coastal States would be *unable* to claim any EEZ at all. After all, the territorial sea has to be *claimed* beyond the old customary 3 miles (Article 3 UNCLOS III) and if the claim is small enough or non-existent, room for an EEZ claim is likely.

THE ARGUMENTS

1. General

The theoretical basis for a bias in favour of Landlocked and Geographically Disadvantaged States (LL & GDS) must be that their positioning in relation to the sea and other States is now something which is beyong their control and can never be changed short of invasion, annexation or amalgamation. The first is unacceptable to the international community.[49] The second bites against the freedom of the annexed territory to remain independent.[50] The third is anathema to the rights of self-determination.[51] In tougher words, unless there has been a major demographic shift, the reason for a State's independence should not disappear over time. Economic considerations in fact outweight the initial basis for becoming an independent nation in the eyes of some onlookers. However, an obligation to amalgamate cannot be justified (in the absence of demographic shifts) purely on economic factors if this is against the particular State's wishes.

As a result, the geographic circumstances of a LL or GDS can never justifiably be changed. So in planning equitable allocation of States' rights, the position of LL and GDS must be assumed to be permanent. This is to be contrasted with the stage of development of a State which can and does change and does depend, at least to some extent, on market forces, the industry of its people and the management skills of its government.

In addition, the political boundaries seldom change (whether justifiably or not). Some boundaries have been drawn as the result of extensive negotiation, hard won compromise or even at great cost to human life during war. As a result, most boundaries are very highly prized and would be given up

[49] Because it breaches Art. 4 *Charter of the United Nation* (1945).

[50] Embodied in Art 1 of the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (U.N./G.A. Res 1514 (XV) 14/12/60).

[51] Found in Art. 2 of *Declaration on the Granting of Independence to Colonial Countries and Peoples* (U.N./G.A. Res 1514 (XV) 14/12/60).

with great loathing.[52] Such boundaries can and often do ignore linguistic, racial, religious and demographic considerations altogether, especially those imposed by colonial powers. In a less violent or exploitative world no doubt the lines would have surrounded naturally forming groups quite differently. But the boundaries have been fixed and it is extremely difficult both in theory and practice to change them.

Perhaps it might be said that "geographic disadvantage" is part of the larger issue of how to manage the interdependence of nations. Reference may be made to Arvid Pardo who, some say, is the father of the modern law of the sea. Pardo asks us not to:

> "forget that we can no longer indulge in the joys of absolute sovereignty, that we are necessarily increasingly interdependent and that we are destined to live or hang together on the same planet."[53]

The imperative is that there are limited resources[54] and those resources are grossly unevenly distributed between States.[55] If we are to establish a new, more just and more humane world order[56] then each country must be "responsible not only for its own progress or lack of progress but also for that of neighbouring countries."[57] Pardo's solution is:

> "to escape from the traditional dilemma, sovereignty or freedom, by constraining both sovereignty and freedom through the introduction of a third element, international co-operation, which is particularly needed if the ocean environment is to be beneficially developed."[58]

It can be seen[59] that incidental features can create disproportionately large differences between States. The expansion of coastal jurisdiction has been at the expense of freedom of the high seas and has thus robbed from the sources of wealth of some States.[60] Other States find themselves "zone locked" by a number of poor landlocked nations which creates a heavy burden for such States to bear alone in providing access to the sea and port facilities.[61] Small island nations often find themselves in remote areas far from major shipping lanes which result in problems of trade and transport

[52] See for example the acrimony of Bolivia as a result of the Chilean takeover of its Pacific coastline in 1879 – See Debates p. 246 paras. 9, 10; p. 251 paras. 75–79 and p. 252 paras. 82–84.

[53] "A Statement on the Future Law of the Sea in Light of Current Trends in Negotiations" 1974 1(4) *Ocean Development & International Law Journal* 315, 335.

[54] Debates p. 247 para. 20 (Lesotho) and p. 253 para. 16 (Tunisia).

[55] Manley, R.H., "Developing Nation Imperatives for a New Law of the Sea: UNCLOS I and III as Stages in the International Policy Process" (1979) 7(1–2) *Ocean Development & International Law Journal* 9, 15 and references where he points out that the top 10 nations which gain the most from the annexation of 200 mile EEZs are (in order) U.S.A, Australia, Indonesia, New Zealand (18 times its land area), Canada, USSR, Japan, Brazil, Mexico and Chile. The 6 rich developed nations get 36% of the world's EEZs. They get more than all the EEZs of all 110 developing nations. See also Debates p. 242, and 3 paras. 47, 48.

[56] Debates p. 246 para. 13, Mr Godoy (Paraguay).

[57] Debates p. 246 para. 9, Mr Treninnick (Bolivia).

[58] Pardo A., 1(4) *Ocean Development & International Law Journal* 315, 330.

[59] See judgment in the *North Sea Continental Shelf Cases* [1969] ICJ Rep. 3, para. 91.

[60] Extavour above note 6 p. 252; Pardo above note 53 p. 333.

[61] Alexander and Hodgson above note 4 p. 561 and p. 576.

costs.[62] Some have, by reason of their location, been robbed of the opportunity to develop the technology and industry to compete in marine exploitation.[63]

Against this it has been said that concentrating on geographical factors blinds one to the larger issues of economic inequities. That is, one should look to all factors including development and availability of land-based resources before decisions are made.[64] Put differently, this is an argument in favour of consistent re-distribution:

> "If development disqualified a disadvantaged State from obtaining the resources of the sea, developed coastal States should also be disqualified. Similarly, if the availability of land mineral resources disqualified disadvantaged States, it should also disqualify coastal States."[65]

It has further been argued that a number of the poorest nations in the world (presumably mainly African States), many of which are also front runners for preferential treatment under the guise of geographic disadvantage, were areas with little or no economic viability but which opted for freedom from outside rule as separate entities rather than in combination with neighbours.[66] In other words, they have largely brought it on themselves. The corollary of this argument is to ask rhetorically whether it is justifiable to encourage the fragmentation of the international community by guaranteeing a share of the world resources no matter how poor the new country is naturally or how foolish the move is. And would such guarantees encourage independent indigenous development?

The weakness in both the consistency argument and the foolish independence argument is that they both ignore the facts of history and the reality of the EEZ claims as legitimate under Customary International Law (CIL).[67] They also ignore the reality of starvation and helplessness caused by vistas with no opportunity in sight.

[62] Alexander and Hodgson above note 4 p. 566.
[63] Debates p. 241 para. 28 (Austria).
[64] Debates p. 259 paras. 10–15 (Singapore).
[65] Debates p. 259 para. 11 (Singapore).
[66] Alexander and Hodgson above note 4 p. 560.
[67] In support of the proposition that there is a CIL right to establish a 200 mile EEZ, in order of the sources of law according to Art. 38.1 of the States of the International Court of Justice:
(a) *International Conventions:* UNCLOS III Arts. 55–57; There were, in 1982, over 150 international fishing agreements recognising the concept either implicitly or expressly. See Anand, R.P., "The Politics of a New Legal Order for Fisheries" (1982) 11 *Ocean Development & International Law Journal* 265, at 282 & 3.
(b) *Custom:* As at 1/3/85 89 of the 140 States had claimed 200 mile EEZs or EF(Fishing)Zs. Of course quite a number of those which had not made such a claim are unable to do so because of their geographic juxtapositioning against other States. The number of States asserting a claim less than 200 miles as a matter of law (as opposed to practice) was only 8. (See "National Claims to Maritime Jurisdiction" Smith, R.W.) *Limits in the Seas* No. 36, 5th Revision (March 6, 1985) Office of the Geographer, Bureau of Intelligence & Research (USA) pp. 6–11). Moreover, those States which are most affected by the establishment of the EEZ, that is the large long distance fishing nations, also recognise the concept as binding. At the signing ceremony of UNCLOS III on 10/12/84, States occupying 88.67% of the world's total coastlines signed. (*Keesings Contemporary Archives* Vol XXXI p. 33503 quoting U.N. Sec. Gen. Sr. Javier Perez de Cuellar.) The three largest

Therefore, history being a two-edged sword, compelling us to action but moderating us to attainable goals, it seems prudent to concentrate on a basis for re-distribution which can be palatably justified to all. Geographic disadvantage may be such a one. It is all the more palatable if the type of disadvatnage is linked to the type of concession given. If shortage of fishing grounds be the problem, access to neighbours' grounds should be the solution. If inability to mine one's own continental shelf be the problem, then access to neighbours' shelves or technology transfer[68] should be the solutions. And so on. There are no water-tight arguments which are impossible to refuse. There are only arguments more palatable or defensible or consistent than others. Arguments by themselves may not change attitudes very quickly, but better quality arguments stand a better chance than others of being effective.

2. Preferential Rights in the Area and the High Seas

It is relatively easy to establish a respectible argument that all States have a right to participate in the exploration and exploitation of the high seas and the Area on an equal footing with all others.[69] Such an argument is based on the sovereign equality of all States[70] and the common heritage of mankind principle.[71] However, it is a different matter to claim preferential rights[72] for some States in these zones on the basis of geographical disadvantage alone. Indeed, this was only raised twice in the Debates, once when

fishing nations, Japan, USSR & USA (according to Churchill, R.R. and Loew, A.V., *The Law of the Sea* (1983) p. 198 table 4 as at 1980) all pay licence fees for fishing in foreign EEZs. (See *Islands Business* Sept., 1985 p. 19; *Pacific Islands Monthly* July, 1985 p. 45. Harrison, C.S., "Costs to the United States in Fisheries by not Joining the Law of the Sea Convention" in Van Dyke, J.M. (ed.), *Consensus & Confrontation; The United States & The Law of the Sea Convention*. (1985) Law of the Sea Institute Workshop, January 9–13, 1984 Honolulu, Hawaii, p. 342, 345).

(c) *General Principles:* Anand points out that since the establishment of the 200 mile EEZs, zone catches have increased rather than decreased, laying to rest the fear that the creation of the EEZs would reduce the resources available to mankind (in Van Oke above p.397).

(d) *Judicial Decisions:* See *Fisheries Jurisdiction Case* (U.K. v. Iceland) [1974] ICJ Rep. 26 confirming the concept of an EEZ of some width as accepted in international law; *Tunisia/Libya Continental Shelf Case* [1982] ICJ Rep. 18 where Judge Oda concluded nations were permitted to assert 200 mile EEZs. (See also Charney, J.I. "The Exclusive Economic Zone & Private International Law" (1985) 15 *Ocean Development & International Law* 233, 239 and references.)

(e) *Highly Qualified Publicists:* Charney above p. 271 lists C. Fleischer, A. Hudson, Fitzmaurice-Lachs, W.T. Burke, Professor Hingorami, A.O. Cukwurah and F.O. Vicuna. To this I would humbly add Churchill and Lowe above pp. 198, 199 and 206, Anand above (Politics of a New Legal Order) pp. 280, 283, Ambassador J.L. Molone (Assistant Secretary for Oceans & International Environmental & Scientific Affairs & Chairman of U.S. Delegation to UNCLOS III 1981–82) in Van Dyke above pp. 554, 5, Charney himself p. 257, Harrison in Van Dyke above p. 349 and references, Josefa Maiava in Van Dyke above p. 380 and Gamble, J.K. and Frankowska, M., "The Significance of Signature to the 1982 Montego Bay Convention of the Law of the Sea" (1984) 14 *Ocean Development & Intnational Law* 121, 137.

[68] Essential to simply enable participation. See Debates p. 241 para. 28 (Austria).

[69] Debates p. 249 para. 50 (Iraq) and p. 243 para. 59 (Iran).

[70] Debates p. 256 para. 49 (Uruguay).

[71] Debates p. 240 para. 19 (Ghana).

[72] As distinct from appropriate concessions as described in text accompanying note 68 above.

it was recognised as a matter proper for the attention of the First Committee,[73] and the second by the delegate from Switzerland. Mr Andres' only argument in support was that such measures were 'a meaningful application of the common heritage of mankind principle'.[74]

It is submitted that there is no satisfactory argument which can be mounted solely on the basis of geographical considerations.[75] The Second Committee did not and could not make such concessions. The First Committee did in Article 148. This article emphasizes the particular disadvantage of remoteness from, and access to, the Area. However, in my submission such concessions come under the rubric of equal participation rights. In any event, the article is confined to *developing* landlocked and geographically disadvantaged States. Nowhere in the Convention are geographically disadvantaged States given priority in the area qua geographically disadvantaged States. The critera are mainly economic need[76] and compensation for markets affected by the minerals recovered from the Area.[77]

3. The Exclusive Economic Zone (living resources)

There is general agreement that there should be foreign access rights to the EEZ for the purposes of exploiting its living resources.[78] This right is said to be based on the recent establishment of the zone thus making it "only appropriate that the international community should share in the benefits derived from this recognition by individual States".[79] This, in effect, is a generalised equitable argument. Certain States are the main beneficiaries[80] to the exclusion of very needy States. Therefore there should be some redistribution of the zone's wealth to counter this inequitable effect, and to reciprocate for the recognition of the zone.

By itself this does not link the benefit (of access) to a geographical cause and would be outside the ambit of this paper. Therefore the only way access to the living resources of the EEZ can be justified here is to use the argument of tradition. In general terms, traditional fishing grounds in foreign EEZs can only justifiably be protected if the effect is to preserve the right of unimpeded access to the fisheries in areas of the seas which, were it not for

[73] Debates p. 247 para. 25 (Lesotho).
[74] Debates p. 243 para. 52.
[75] Subject to arguments canvassed below p. 000.
[76] See generally Articles 136, 140.1, 150 and also regarding transfer to technology Art. 144.1(b), training programmes Art. 144.2 and regarding scientific research Art. 143.3(b).
[77] See Arts. 151.10 and 164.2(d).
[78] "Should be protected": Debates p. 248 para. 39 (Afghanistan), p. 243 para. 57 (Hungary), p. 245 para. 2 (Nigeria) and p. 253 para. 17 (Tunisia).
"Equal rights": Debates p. 249 para. 52 (Iraq), p. 249 para. 54 (Indonesia), p. 251 para. 70 (Turkey), p. 253 para. 21 (Algeria), p. 255 para. 33 (Thailand), Declaration of African Unity (UN Doc. A/CONF. 62/33 of 19/7/75 Part C para 9), and c.f. Extavour U.C., above note 6 p. 262.
"Preferential rights": Debates p. 250 para. 65 (Peru), p. 257 para. 58 (Romania), p. 257 para. 62 (Ecuador) and p. 256 paras. 48 and 51 (Uruguay).
[79] Pardo above note 53 p. 333. See also Debates p. 243 para. 48 (Switzerland). p. 250 para. 59 (Pakistan), p. 249 paras. 50, 51 (Iraq), p. 243 para. 57 (Hungary), and also see Extavour W.C., above note 6 p. 262.
[80] See above note 55.

the establishment of EEZs, would remain parts of the high seas.[81] However, left at this level this would protect all the large, rich, long distance fishing nations including the USA and USSR. Therefore it might be desirable to confine the rights further to those traditional grounds where no other grounds are reasonably available (for example, this would not require Japan to fish in the Atlantic to replace its Pacific fisheries).

If the category needed to be further confined, another requirement could be included that only those traditional grounds which were essential to the State's domestic nutritional needs would be protected. This would exclude many U.S. grounds but would also catch some Thai grounds used for export. It would be difficult to distinguish between such cases unless conditions of economic development were employed.

It has been claimed that the two competing interests in the EEZ (coastal and foreign) can only be reconciled by the formula in Part V of UNCLOS III. In other words if the coastal State harvests all it can on its own (that is, without the help of joint venture partners) only then would foreign States have rights of access.[82] In practice this may well be the only way a solution could work. But even this is subject to the criticism that coastal States are under no obligation to refrain from utilizing joint venture arrangements so why should access States be so restrained?[83]

Of course, such arguments only establish the access rights and say nothing of the terms for such access. Such terms would need to be negotiated based on ability to pay and other factors largely unconnected with geographical considerations per se.

4. Continental Shelf (non-living resources)

There are four arguments for supporting the sharing of the non-living resources to the Continental Shelf (C.S.). The C.S. before 1945 (and perhaps also before 1958) was part of the res communis omnium (being part of the high seas). The 1958 Convention unfairly changed that, and therefore sharing is necessary to redress that imbalance.[84] The trouble with this first argument is that it begs the question. It assumes C.S. is an unfair appropriation of resources and that the C.S. was part of the res communis omnium before 1958. Both these are the very questions in issue. It was also largely State practice adopting the new zone which changed the law, not just the 1958 Convention.[85] It is perhaps more relevant to ask whether the 1958 delegates would have conferred the unlimited boundaries to the C.S. they did if it had been known the extent to which the Shelf would ultimately "admit of exploitation".[86] The only authoritative answer to this is to quote the

[81] Extavour W.C., above note 6, p. 262.
[82] Ambassador Nandan (Fiji) Explanatory Memorandum by Chairman Negotiating Group 4 (19/5/78) UN Doc. A/CONF. 62/RCNG/1 Annex NG4/10 and see Arts. 69.3, 70.4 and 72 of UNCLOS III.
[83] Manley R.H., above note 55 p. 18.
[84] Extavour W.C., above note 6 p. 252.
[85] Charney J.I., above note 67 at p. 236.
[86] Pardo A., above note 53 p. 333 implies they would not have.

International Court of Justice judgment entrenching the C.S. regime as being based on natural appurtenance, and severely restricting reallocation of resources.[87] Of course this case is now somewhat dated.

The second argument concerns the question of whether the prior establishment of the C.S. bars its later attack. The argument by opponents of a sharing regime here is that the C.S. was well established and recognised by the time discussions about its sharing arose. The C.S. confers soveriegn rights and therefore those rights cannot now be derogated from.[88]

It appears that this argument relies on the proposition that mere timing determines rights. However, is it equitable for the mere timing of the development of certain principles or rights to determine how later and other principles (here common heritage and new economic order principles) are to develop? Surely each principle or right must be viewed in a total context and the totality of rights taken into account and altered if necessary to conform with prevailing thinking.

It is really a question of "how immune are so-called acquired rights"? Perhaps more accurately it is the question "how effective a weapon are the new sharing principles"? The history of the C.S. has been short in international law terms (42 years). Nevertheless up until the 1970s it was fairly uniformly accepted. Since then opposition has come mainly from LL & GDS to reform the huge imbalance it has created.[89] The reform call has been to establish a sharing scheme[90] and even to abolish the C.S. altogether.[91]

The third argument is one which emphasizes the value of non-renewable resources when compared to renewable resources. It is argued that it would be an excessive sacrifice to include valuable non-renewable resources in the sharing system.[92] The only point to be made here is that access to non-renewable resources can be managed and restricted to a greater extent than other forms of resources if that is so required. The degree of control desirable should not affect the right itself (as it does not affect the right in the case of living resources). The other point is that the most valuable resource of the C.S. (apart from oil) is probably manganese nodules, and manganese nodules are a naturally regenerating resource, regenerating at a rate estimated to be faster than current world demand.[93] It is therefore concluded by some

[87] As being an attempt to "refashion nature". See *North Sea Continental Shelf Cases* [1969] ICJ Rep. 3, para. 91.

[88] Debates p. 257 para. 58 (Romania), p. 256 para. 59 (Pakistan), p. 247 paras. 24 and 25 (India), p. 253 para. 13 (Kenya), p. 253 para. 17 (Tunisia), p. 243 para. 59 (Iran) and p. 245 para. 2 (Nigeria).

[89] Debates p. 255 para. 42 (Israel) and p. 259 para. 9 (Liberia).

[90] Debates p. 259 para. 9 (Liberia), p. 241 para. 27 (Austria), p. 240 para. 19 (Ghana), see also Extravour W.C., above note 6 p.251 referring to Bolivia in Doc. A/A.C. 138/92 of 12/7/73 Art. 14, Uganda/Zambia in Doc. A/A.C. 138/SC II/L. 41 of 16/7/73 and Laos in Doc. A/CONF. 62/SR. 22 p. 180.

[91] And return it to the high seas common heritage regime. Debates p. 259 para. 9 (Liberia).

[92] Debates p. 255 paras. 33 and 35 (Thailand).

[93] That is, at the 1960 world consumption rate. See the descriptions of size of deposits, values and growth rates in speech by Arvid Pardo of Malta to the General Assembly 1/11/67 22 GAOR, A/C. 1/PV. 1515 & 1516 (1967) and especially paras. 26-28 of 1515th meeting.

that there is no justifiable distinction between living and non-living resources for present purposes.[94]

The final argument is that non-living resources are not essential to human health or nutrition and therefore there is no imperative regarding their sharing.[95] However this could be said for much of the access to fishing grounds also.

PRESENT LAW

1. UNCLOS III is the Most Radical Statement Yet

The Convention can be regarded as the most venturesome statement that was possible at the time. There are three reasons why it can probably be so described. Relatively few have ratified it (34 as at 15/9/87)[96] and therefore most regard its more radical provisions as either unacceptable or lex ferenda;[97] Secondly, participation by developing States was very high and as expected, the most radical push possible from such countries was observed; Thirdly, it can be seen that the compromise reached, at least in this area, was a huge and radical leap forward from previous law and even previous concepts. "Geographic Disadvantage" was thoroughly ventilated.

2. The UNCLOS III Provisions are Weak

It is fairly safe to assume that at the time of adoption of the final draft of the ICNT in April 1982, it was generally perceived there was no right in (or legitmate basis to a claim by) LL & GDS to the *non*-living resources of neighbouring C.S. What is more (naturally), it can similarly be assumed that the definition of a GDS could not be said to include " a State whose geographical situation makes it dependent upon the exploitation of the *non*-living resources of the C.S. of other States".

Moreover, the convention contains virtually no restriction on coastal State authority to forbid access to foreign fishing[98] and cannot be used to compel a State to provide such access, even if it fails to determine an allowable catch and its harvesting capacity, nor even if a surplus is declared.[99] In addition, the Article 69 and 70 rights of LL & GDS to preferential treatment fail to "significantly condition or modify the coastal States" complete control over its EEZ[100] and even the right to fish part of the surplus is tenuous.[101] The Articles would not provide such States with an effective right of access to

[94] Debates p. 243 para. 49 (Switzerland).
[95] Debates p. 256 para. 52 (Uruguay).
[96] The group being a curious and fairly unrepresentative one. With the possible exception of Yugoslavia, they are all either landlocked and/or extremely poor with much to gain from the new EEZs.
[97] The law which it is desired to establish.
[98] Burke, W.T., "The Law of the Sea Convention Provisions on Conditions of Access to Fisheries Subject to National Jurisdiction" (1984) 63 *Oregon Law Review* 73, 91.
[90] Id. 90. This is a result of the operation of Article 297.
[100] Id. 96.
[101] Id. 97.

an adjoining EEZ, simply a right to negotiate in competition with other (richer) nations.[102]

3. UNCLOS III is not CIL

In January 1984 Burke was constrained to say, on the basis of the April 1983 FAO survey, that national legislation still indicated that the major provisions of the convention had not found their way into CIL. The sole certain exception was the rights over living resources within 200 miles.[103] The particular examples given of failed principles included equivalents to the concepts embraced by Articles 69 and 70.[104]

Burke put it in unequivocal terms. He believed the treaty was not then taken by States to mandate their behaviour. The absence of protests from fishing States was explicable only by the conclusion that "[c]oastal State control is almost universally accepted and is mostly thought to be nearly absolute".[105] One of the most recent surveys, a survey taken in 1986, came to largely similar conclusions.[106] It is noted by Juda that even where the national legislation lists criteria for the exercise of the discretion to grant access (only 6 did so), some have still exercised the discretion in blatantly political ways.[107]

4. Bilateral Agreements Do Not Assist

This is perhaps the most telling form of State practice. There have been two major surveys of bilaterals done in 1979 and 1983.[108] The conclusions drawn by the authors in their first survey were that the bilaterals did not make any specific reference to a requirement to give access to foreign vessels to fish any surplus.[109] The later study showed many took into account the need to minimize dislocation of habitual fishermen of a region and other factors outside UNCLOS III. Sadly, none of the agreements examined referred expressly to LL or GDS and few took into account the special needs of developing States of the same subregion.[110]

It must therefore be accepted that the very broad discretion of the coastal State in the appropriate management and conservation measures to be taken

[102] Id. 100.

[103] Burke, W.T., "The Law of the Sea Convention & Fishing Practices of Non-Signatories, With Special Reference to the United States" in Van Dyke J.M., above note 67 pp. 314, 332-3 and references.

[104] Ibid.

[105] Id. 333.

[106] Juda, L., "The Exclusive Economic Zone: Compatibility of National Claims & the U.N. Convention on the law of the Sea" (1986) 16 *Ocean Development & International Law* 1-58.

[107] Ibid. E.g. US stopping USSR because of Afghanistan invasion and Poland because of crackdown on Solidarity demonstrations.

[108] Referred to by Juda L., above note 106 pp. 25, 26. Surveys by Carroz, J.E. & Savini, N.J., "The New International Law of Fisheries Emerging From Bilateral Agreements" (1978) 3 *Marine Policy* 79-98; "The Practice of Coastal States Regarding Foreign Access to Fishery Resources" in FAO *Report of the Expert Consultation on the Conditions & Access to the Fish Resources of the Exclusive Economic Zone* No. 293 (Rome; FAO April 1983) pp. 43-72.

[109] Juda L., op. cit. 26

[110] Ibid.

in, and the conditions of access to, its EEZ and (if it chooses) in refusal of access to its C.S. remain virtually unfettered under current law.

CONCLUSIONS/PROSPECTS

It is unfortunate that the less developed countries did not use clearer logic, more precise definitions and more tact in presenting their case for Agenda items 9 and 10 at the Debates.[111] For instance, the 22-power draft[112] inspired the Nigerian delegate[113] to say "[t]he proposal . . . seemed . . . to smack of hegemonistic tendencies".[114] Clearly this was an inflammatory remark and caused explicitly (at least in part) by the fact that the sponsors of the draft included very rich nations (Sweden, Singapore, Switzerland, Austria and Belgium). But it was uncalled for because other sponsors included honest fellow Africans such as Lesotho, Upper Volta, Swaziland, Mali, Uganda, Zambia and Botswana. It would have been far better for the GDS to stick with those drafts which made it clear the concessions sought would only be for developing States.[115] If such drafts had been rejected, the GDS would have been virtually no worse off in terms of rights under the Convention and probably better off in terms of credibility at the negotiating table in the future.

To be defensible, a permanent compensation regime is inappropriate and also dangerously generous if not linked to the economic development status of claimants.[116] This link should not be a *basis* for concessions so much as a qualifying hurdle before the regime operates in favour of any one State, or (if already enjoying benefits) a safety-valve or cut-off point to disqualify.

The distressing thing about the future is that even if co-operation occurs, it may not accomplish much. For instance, the most encouraging sign yet has come from the Declaration of African Unity[117] which establishes intra-regional co-operation. But virtually the entire region involved in that Declaration is itself crushingly poor. It is claimed that most LL & GDS are concentrated together into cohesive agglomerations and thus can provide little assistance for each other.[118] This is also true of the distribution of the least developed countries.[119]

The solutions are unlikely to be realised. They may include direct aid from the (Deep Seabed Mining) Authority[120] and inter-regional co-operation to provide access to adjacent regions which may be better able to afford such concessions.[121] Both solutions in effect require the international community

[111] Landlocked countries (item 9) and Rights and interests of shelf-locked States and States with narrow shelves or short coastlines (item 10) 32–35th meetings at Debates.
[112] A/CONF. 62/C.2./L. 39 of 19/7/74.
[113] Mr Ogundere.
[114] Debates p. 245 para. 2.
[115] For example the Haiti-Jamaica draft above note 14.
[116] This is in effect what Mr Chao (Singapore) was saying – Debates p. 259 paras. 10–14.
[117] U.N. Doc. A/CONF. 62/33 of 19/7/74 see above note 78.
[118] Debates p. 251 para. 72 (Turkey).
[119] Alexander L.M. and Hodgson R.D., above note 4 pp. 557 and 580 and see also figures 2 and 3 therein on pp. 578 and 579.
[120] Alexander L.M. and Hodgson R.D., above note 4 pp. 580, 581.
[121] Debates p. 251 para. 72 (Turkey).

to endorse unreservedly the common heritage principle[122] and this is far from a realistic expectation. The world is not yet ready for a complete equitable redistribution. The immediate task is limited to applying equity where a nation is disadvantaged in its ability to obtain what it needs to cover its food or health needs and for its development, and to prevent making other kinds of disadvantage more acute by allowing inequities elsewhere.[123] If neutral unchanging geographic features can be used to justify such measures, then they must be so used.

GLOSSARY OF TERMS AND ABBREVIATIONS

Area	The Deep Sea Bed beyond all national jurisdiction within the meaning of Article 1(1) UNCLOS III.
C.I.L.	Customary International Law.
C.S.	Continental Shelf.
Debates	The Third Law of the Sea Conference Debates, 2 UNCLOS III, Official Records of Proceedings, Second Session, Second Committee 8-9th August, 1974, 32nd-35th Meetings pp. 238–259.
E.E.Z.	Exclusive Economic Zone.
E.F.Z.	Exclusive Fishing Zone.
F.A.O.	Food and Agriculture Organisation of the United Nations.
G.D.S.	Geographically Disadvantaged State(s).
H.S.	High Seas.
I.C.J.	International Court of Justice (U.N. World court based at The Hague).
I.C.N.T.	Informal Composite Negotiating Text (the label given to draft of UNCLOS III created at the Sixth session May–July, 1977).
L.L. & G.D.S.	Landlocked and Geographically Disadvantaged State(s).
R.S.N.T.	Revised Single Negotiating Text (the label given to draft of UNCLOS III created at the Fourth session March–May, 1976).
UNCLOS III	The Third United Nations Convention on the Law of the Sea.
UNCTAD	United Nations Council on Trade and Development.

[122] Debates p. 254 para. 23 (Algeria).
[123] Debates pp. 256, 7 para. 53 (Uruguay).

APPENDIX
SELECTED PROVISIONS FROM CONVENTION ON THE LAW OF THE SEA (UNCLOS III)

Article 69
Right of land-locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 70
Right of geographically disadvantaged States

1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
(b) The extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
(c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
(d) the nutritional needs of the populations of the respective States.

4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisafctory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account.

5. Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 71
Non-applicability of articles 69 and 70

The provisions of articles 69 and 70 do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

SOCIETY OF ST. VINCENT DE PAUL

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